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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 92-316
RIVERTOWN COMMUNICATIONS CO. INC.)	File No. BPH-911008ME
SAMPLE BROADCASTING COMPANY, L.P.)	File No. BPH-911010MA
For Construction Permit)	
for a new FM Station on)	
Channel 282C3 in Eldon, Iowa)	

To: Administrative Law Judge
John M. Frysiak

OPPOSITION TO MOTION TO ACCEPT LATE-FILED PLEADING

Sample Broadcasting Company, L.P., ("Sample"), by its attorney, respectfully opposes the "Motion to Accept Late-filed 'Motion to Enlarge Issues'", filed by Rivertown Communications Company, Inc. ("Rivertown"), on February 24, 1993, in the above-captioned proceeding.¹ In support thereof, the following is shown.

Rivertown concedes that its Motion to Enlarge issues was not filed in a timely manner. It asserts that the failure to file in a timely manner was the result of its counsel's "uninformed recollection" of a prior rule.

Counsel's error does not excuse non-compliance with the Commission's rules. See, e.g. Vela Broadcasting Co., 102 FCC 2d 997 (Rev. Bd. 1985). Moreover, Rivertown's counsel was clearly aware of the change in the hearing procedures which

¹ By a separate pleading which shall be timely filed, Sample will address the substance of Rivertown's Motion to enlarge issues. The instant pleading is limited to Rivertown's Motion to Accept.

were implemented at the same time as the change in the filing date for motions to enlarge issues, for he complied with the procedures for automatic document exchange.

The expedited hearing procedures, which call for the filing of motions to enlarge issues within 30 days of the release of the hearing designation order, are not new. They were adopted in a report and order released December 21, 1990, more than three years ago. Proposals to Reform the Commission's Comparative Hearing Process, 6 FCC Rcd 157 (1990). Rivertown's counsel is experienced in practicing before the Commission. His failure to comply with the deadline for motions to enlarge issues is due, not to causes beyond his control, but to mere negligence.²

Rivertown asserts that it should be permitted to file its motion despite being untimely because the matters were previously raised in its petition to deny, filed April 14, 1992, and because Rivertown's motion was served by hand. Neither of these justifications are valid.

As pointed out in the Hearing Designation Order, Rivertown's April 1992 petition should not have been filed at that

² Rivertown's assertion that its counsel first became aware of the correct deadline for filing motions to enlarge when he was editing the motion is disingenuous at best. He would have received Sample's timely-filed motion to enlarge issues, which expressly discussed the deadline for such filings, by that time. Hence it was Sample's filing which call his attention to his tardiness.

time and was dismissed for that reason.³ Moreover, there is no exception in the rules for filing a petition out of time when the substance had been raised in an earlier petition. In truth, Rivertown's pending motion could easily have been filed in a timely manner, as it presents no new facts or arguments. The subject matter of Rivertown's motion does not excuse its untimely filing.

Similarly, the method of service on other parties should not be a consideration for the Commission in determining whether to accept a late-filed pleading. The Commission has no rule which provides for an automatic extension of a filing deadline if the document is hand-served on the parties to the proceeding. The sole effect of mail service is to afford the other parties an additional three days in which to file a response. It is an accommodation in recognition of the fact that documents sent by mail may take three days to arrive, and the additional time is provided so as not to penalize the recipients. Hand service has never been held to warrant acceptance of a later-filed submission.

Lastly, Rivertown argues that its Motion should be accepted pursuant to Section 1. 229(c) of the rules, even though it is late-filed. Rivertown provides no authority to support its bald assertion in this regard; it cites to no case or decision in which Section 1.229(c) was held to apply in

³ The only possible motive for Rivertown to have filed its allegations against Sample prior to designation for hearing would be intimidation, an impermissible purpose.

case similar to the instant one. Merely asserting that the subject matter falls within the bounds of Section 1.229(c) does not make it so. Rivertown has the burden of proving the applicability of Section 1.229(c) to its petition. It has not even attempted to do so.

Accordingly, Rivertown's Motion to accept its late-filed Motion to Enlarge Issues should be denied, and the Motion dismissed as untimely-filed.

Respectfully submitted,

SAMPLE BROADCASTING COMPANY, L.P.

By 

John S. Neely
Its Attorney

March 2, 1993

Miller & Miller, P.C.
P.O. Box 33003
Washington, DC 20033

CERTIFICATE OF SERVICE

I hereby certify that on this 2 day of March, 1993, a copy of the foregoing document was placed in the United States mail, first class postage prepaid, addressed to the following:

Norman Goldstein, Esq.
Mass Media Bureau, Hearing Branch
Federal Communications Commission
Washington, DC 20554

Donald E. Ward, Esq.
Law Offices of Donald E. Ward, P.C.
P.O. Box 286
Washington, DC 20044-0286

Robin W. Zuer